



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: FEBRUARY 09, 2023

IN THE MATTER OF:

Appeal Board No. 626604

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective April 18, 2022, on the basis that the claimant was not available for employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed November 9, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case No. 022-17947, and modified the initial determination holding the claimant ineligible to receive benefits on the basis that the claimant was not available for employment, to be effective April 18, 2022 through November 3, 2022 only, and, as so modified, sustained that initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits on the basis of availability. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was separated from employment on or before October 21, 2021 under nondisqualifying circumstances not at issue before the Board, and decided in 022-22660. The decision in that case has not been appealed.

The claimant filed a claim for unemployment benefits on April 29, 2022; her claim was made effective April 18, 2022. The claimant was aware that she had to be ready, willing and able to accept work immediately to be eligible to receive unemployment benefits.

As of the time of her filing, the claimant had two or three young children. Prior to April 2022, the claimant had asked her siblings if they could provide childcare for her children when she went to work. Two of her siblings said that they would watch the claimant's children if the claimant paid them to do so. The claimant's brother indicated that he had been, and remained, available and able to babysit the claimant's three children from 8:00 AM to 4:00 PM, Mondays through Fridays, while the claimant worked, for \$550 per week. The claimant's sister, a certified foster care babysitter, indicated that she would provide care for the claimant's three children for \$400 per week, and that she was able to begin providing care as soon as possible.

The claimant could not afford to pay either of these weekly amounts to her siblings as of the date she filed her claim, or as of the date of the hearing. However, the claimant's sister agreed to take the claimant's children immediately if she knew she was going to get paid in the future. Similarly, the claimant's brother told her that he would work with the claimant regarding payment.

**OPINION:** The evidence establishes that the claimant had made arrangements with her brother and sister to care for her three young children upon her employment. Although the claimant testified that she could not afford to pay her siblings what they were asking to be paid because she was not employed, she also credibly testified that her siblings were willing to work with her, as long as they knew they were going to get paid in the future. This undisputed testimony was supported by letters submitted by the claimant's siblings, that were received into evidence. In particular, the claimant's sister indicated that she was available to watch the children as soon as she was needed by the claimant.

Under these circumstances, where the claimant arranged for two options for her children to be cared for by family members, who are willing to work with the claimant until she is able to pay them, we find that the claimant has childcare arrangements in place for as soon as she starts working. Accordingly, we find that the claimant is ready, willing and able to start

work immediately, and conclude that the claimant is eligible to receive unemployment benefits.

The hearing decision should be reversed, and the ID of ineligibility should be overruled.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective April 18, 2022, on the basis that the claimant was not available for employment, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER